

The complaint

Mr M's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance¹ (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) not accepting a claim under Section 75 of the CCA.

The timeshare in question was bought jointly by Mr and Mrs M, but as the loan used to make the purchase was in Mr M's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs M where it is appropriate to do so.

What happened

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 8 October 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,035 fractional points, and after trading in their existing membership, they ended up paying £5,999 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr M paid for their Fractional Club membership by taking finance of £5,999 from the Lender (the 'Credit Agreement').

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 3 September 2020 (the 'Letter of Complaint') to raise a number of different concerns about the Fractional Club membership and the associated Credit Agreement. As both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not respond to the complaint within the eight weeks required by the regulator (it later said it did not receive it) so the complaint was referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. In addition, the PR said that Mr and Mrs M's Fractional Club membership had been sold and/or marketed to them as an investment, which was in breach of Regulation 14(3) of the Timeshare Regulations². And the PR said that this breach was an additional reason that rendered the credit relationship between Mr M and the Lender unfair to him.

¹ At the time the lending was agreed, the Lender was trading as Hitachi Capital Consumer Finance.

² The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

The provisional decision

Having considered everything that had been submitted, I didn't think Mr M's complaint ought to be upheld. I set out my initial thoughts in a provisional decision (the 'PD') and invited both sides to submit any new evidence or arguments that they wished me to consider before I made my final decision.

In the PD I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction, and these relevant conditions appear to have been met here.

However, the Limitation (Northern Ireland) Order 1989³ (the 'LO') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we will usually say it was fair for the creditor to rely on the LO to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.

The limitation period to make a claim against the Lender for alleged misrepresentation by the Supplier expires six years from the date on which Mr M had everything he needed to make such a claim.

As the letter of complaint to the Lender makes clear, Mr and Mrs M made their purchase of the Fractional Club membership on 8 October 2012. And Mr M says they made this purchase based on the alleged misrepresentations of the Supplier, which he says they relied on. And as a loan from the Lender was used to help finance the purchase, it was when Mr M entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim.

³ As Mr M lives in Northern Ireland this is the applicable law.

So, Mr M needed to notify the Lender of his claim by 8 October 2018. But Mr M first sent notification to the Lender of his claim for alleged misrepresentations by the Supplier on 3 September 2020. As that was more than six years after he entered into the Credit Agreement and related Purchase Agreement, I don't think it would have been unfair or unreasonable of the Lender to rely on the LO to decline the claim. As such I do not think the Lender needs to do anything further in relation to his claim for misrepresentation.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

I've already explained why I don't think Mr M's Section 75 claim of misrepresentation by the Supplier ought to succeed. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr M and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
- 4. The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationship between Mr M and the Lender.

The Supplier's sales & marketing practices at the Time of Sale

Mr M's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance, that Mr and Mrs M were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, this doesn't strike me as a reason why this complaint should succeed.

I acknowledge that Mr and Mrs M may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr M's credit relationship with the Lender was rendered unfair to him under Section 140A for the reason above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to

them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs M the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

And there is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs M, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

But on the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs M as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between the Lender and Mr M have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Mr M and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr M and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led Mr and Mrs M to enter into the Purchase Agreement and Mr M into the Credit Agreement is an important consideration.

But on my reading of the evidence before me, I am not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs M decided to go ahead with their purchase. There is no direct evidence from Mr and/or Mrs M as to what happened at the Time of Sale or what their motivations to make the purchase were, so there is little actual evidence to support this allegation.

The Letter of Complaint to the Lender provides information regarding the claim and complaint under the CCA, but this is not testimony from Mr M. It does not set out his first-hand recollections of what happened at the Time of Sale, nor does it help me in any way to understand his motivation to make the purchase. And that is important here. If I am to find that a breach of Regulation 14(3) was material, I need to be persuaded that Mr and Mrs M's motivation to purchase Fractional Club membership at the Time of Sale was because it was an investment, with the possibility of a profit at the end.

So, in the absence of direct testimony, I have looked at the circumstances surrounding the sale, and Mr and Mrs M's situation at the time.

As I've said, Mr M was an existing member of a timeshare with the Supplier, and I can see this membership was, like the Fractional Club, asset backed. And I've not seen anything which would suggest that he was unhappy with this membership, which begs the question, why would they change? So, I have considered what they got with the Fractional Club that he didn't have with his existing membership. And the only differences I can see are that Mr and Mrs M would have received additional points and would no longer have been liable to pay a booking fee every time they used their membership.

So, in the absence of any other evidence of their motivation, I think it was probably for these reasons that Mr and Mrs M decided to purchase the Fractional Club.

That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as I am not persuaded that Mr and Mrs M's purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs M's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr M and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on

1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr M in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench*, it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('Plevin') to this complaint when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mr M was provided with information as to the price of Fractional Club membership and the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, he was at least in a position from which he could understand the cost of the Credit Agreement

and compare it with other options that might have been available at the Time of Sale.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr M, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr M into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them. But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr M.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr M entered into wasn't high. At £614.90, it was only 10% of the amount borrowed and even less than that (5.1%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr M wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs M but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to Mr M when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr M.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr M's credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr M's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr M (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr M a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement and related Purchase Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr M."

The responses to the provisional decision

The Lender did not respond to the PD, but the PR did. It provided some comments from Mr M as follows:

"1. It is my understanding, and has been since around 2015, that the so-called FPOC 'shares' are worthless and will provide no return at the end of the 19 years?

No mention of this in the FOS report.

2. The most annoying and distressing aspect of the credit agreement with Hitachi / Novuna is that I am still paying off c£94 per month for a c£6k loan.

Surely, whereas this may be legal, it is ethically and morally unjustifiable? Has been raised with Novuna with no positive outcome.

3. We were led to understand that we could sell the FPOC and not suffer, serious if any, financial loss. Spoken by [the Supplier] sales person but not given in writing.

Totally misleading in my view.

4. There is no recognition that financial and health conditions can change in a few short years. In fairness the FPOC was attractive at the start but health problems and travel difficulties, particularly in the case of my wife, rendered the whole project unrealistic."

As the deadline for further submissions has now passed, the complaint has come back to me for further consideration.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having considered everything afresh, along with everything Mr M has said in response to the PD, I am satisfied that this complaint should not be upheld, for the reasons I set out in the PD. I understand that this will be disappointing for Mr M, but I have to make my decision on the basis of the evidence – and that evidence does not persuade me that anything that happened has rendered his credit relationship with the Lender unfair to him for the purposes of Section 140A of the CCA.

I note from Mr M's response, that nothing further has been said about my provisional findings relating to his claim under Section 75 of the CCA. And indeed, Mr M hasn't said he

disagrees with any of my provisional conclusions in relation to that and the other reasons that were raised which he said caused an unfairness to his credit relationship with the Lender – namely that he and Mrs M were put under undue pressure to make the purchase, and the commission complaint. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on Mr M's points raised in response.

Mr M has said that he now thinks that the Fractional Club membership, and specifically the sale of the Allocated Property will provide them with no return at the end of the membership term. But this is uncertain, and I've seen nothing which suggests that the Allocated Property will not, or could not, be put up for sale by the Trustee's as set out in the Purchase Agreement, so this is not a reason to uphold this complaint.

And as regards the ongoing commitment to making the monthly repayments against the Credit Agreement, this was set out in the contractual documentation signed and accepted by Mr M at the Time of Sale. I can understand that this may be frustrating, especially as the loan was taken to pay for a holiday product that Mr and Mrs M are no longer able to use because of their health concerns and travel difficulties, but this again, is not a reason to uphold this complaint.

Finally, Mr M has said that they were led to understand that they would be able to sell their Fractional Club membership and not suffer a serious, if any, financial loss. This could be construed as a misrepresentation if it was presented as a statement of fact by the Supplier, which could, in turn, have caused an unfairness in Mr M's associated credit relationship with the Lender. But given the lack of colour and context to what Mr M now says and given that there is no detail about who said what and when, I'm not persuaded that such a representation was likely to have been made. This is especially true given the inevitable uncertainty of selling property some way into the future.

From the evidence provided, it seems to me that Mr and Mrs M wanted to purchase the Fractional Club membership at the Time of Sale for the holidays it could provide them, and Mr M used finance from the Lender to pay for the membership. Indeed, Mr M has said that the membership was attractive at the start, but this changed when poor health meant that travel was difficult.

So, while I have some sympathy for the position Mr and Mrs M find themselves in, I don't think that this, or anything that was done at the Time of Sale has caused an unfairness in the credit relationship between Mr M and the Lender. So, I don't think it would be fair or reasonable to uphold this complaint and tell the Lender to pay compensation.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 January 2026.

Chris Riggs
Ombudsman